

Order

Michigan Supreme Court
Lansing, Michigan

February 3, 2006

Clifford W. Taylor,
Chief Justice

127261 & (61)

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman,
Justices

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

SC: 127261
COA: 244589
Kent CC: 01-002471-FC

PATRICK LEWIS a/k/a TONY GRIGGS,
Defendant-Appellant.

On January 11, 2006, the Court heard oral argument on the application for leave to appeal the August 31, 2004 judgment of the Court of Appeals. On order of the Court, the application for leave to appeal is again considered. In lieu of granting leave to appeal, we REVERSE the judgment of the Court of Appeals and REMAND this case to the Kent Circuit Court for a new trial. MCR 7.302(G)(1). Defendant was prejudiced by the erroneous admission of a poor quality tape recording of a conversation to which he was a party. The jurors were allowed to use a transcript of the recording that had been prepared by the police but not reviewed for accuracy by the trial court and not made part of the record. In light of this disposition, the remaining questions presented and the motion to remand are rendered moot and are therefore DENIED.

On remand, if defendant again establishes that he is indigent and entitled to appointed counsel, we direct the Kent Circuit Court to appoint a different attorney.

CORRIGAN, J., dissents and states as follows:

I would allow the parties to file supplemental briefs in this case before acting to reverse the judgment of the Court of Appeals. Unlike our usual practice in cases in which we hear oral argument on the application, the parties here were not invited to file supplemental briefs before oral argument. Because defendant filed a pro se application for leave to appeal, neither defense counsel nor the prosecutor has focused any written efforts on the alleged errors in the Court of Appeals majority and dissenting opinions. I would accord the parties such an opportunity before issuing any order.

WEAVER, J., joins the statement of CORRIGAN, J.



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I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

February 3, 2006

Corbin R. Davis

Clerk